

### **REMARKS**

This amendment is responsive to the Office Action dated December 22, 2008. Applicant has amended claims 1, 25 and 42. New claim 48 has been added. Claims 22, 23 and 29-41 were previously cancelled. Claims 1-21, 24-28 and 42-48 are pending.

#### **Claim Rejection Under 35 U.S.C. § 112**

In the Office Action, claims 1-21, 24-28 and 42-47 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

To advance prosecution of the application, claims 1, 25 and 42 have been amended to remove the reference to the period of bone consolidation. However, in making this amendment, Applicant does not acquiesce or admit that the rejected claims fail to comply with the written description requirement. Withdrawal of this rejection is respectfully requested.

#### **Claim Rejection Under 35 U.S.C. § 102**

In the Office Action, claims 1-21, 24-28 and 42-47 were rejected under 35 U.S.C. 102(b) as being anticipated by Landsberger (US 6,113,599). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Landsberger fails to teach or suggest each and every feature of the claimed invention, as required by 35 U.S.C. 102(b), and provides no rational reason that would have lead one of ordinary skill in the art to arrive at the claimed invention.

#### ***Claims 1-21 and 24***

Independent claim 1, as amended, recites first transmitting means for transmitting force to a first tissue region, and including a first flange engagement structure, second transmitting means for transmitting force to a second tissue region, and including a second flange engagement structure, and expansion means including a first flange that engages the first flange engagement structure of the first transmitting means, and further including a second flange that engages the second flange engagement structure of the second transmitting means, the expansion means for exerting force distracting the first transmitting means from the second transmitting means to create a distraction space for formation of distracted connective tissue, wherein the first flange disengages from the first flange engagement structure and the second flange disengages from the

second flange engagement structure after the distraction is complete, wherein at least one of the first transmitting means, the second transmitting means and the expansion means comprises a biodegradable, bioerodible or bioresorbable material.

Support for the amendments to claim 1 may be found, for example, in Applicant's originally filed specification at page 22, line 27 to page 23, line 1; page 38, lines 22-25; and page 39, lines 3-5. Support may also be found, for example, in FIGS. 1, 2, 3, 4, 5 and 6A-6C of Applicant's specification.

Landsberger does not teach or suggest a first transmitting means that includes a first flange engagement structure and a second transmitting means that includes a second flange engagement structure as recited in independent claim 1 as amended. Nor does Landsberger teach or suggest an expansion means that includes a first flange that engages the first flange engagement structure and a second flange that engages the second flange engagement structures, as is also recited in claim 1.

Rather, Landsberger teaches that the "engagement" of the telescopic drive shafts and the base anchor plates is accomplished via anchor plate nuts 152/155 and externally threaded telescopic drive shaft 133 (Landsberger, Figure 2 and col. 11, lines 37-53), gear housing 210 or anchor plate nut 230 and externally threaded telescopic drive shafts 220/221 (Figure 3 and col. 12, line 41 to col. 13, line 4), housings 310/410 and externally threaded telescopic drive shafts 320/321/420/421 (Landsberger, Figures 4A, 4B; col. 13, lines 59-65; and col. 14, lines 48-51), or housing 510 and drive anchor 530 and guide tubes 520/521 (Landsberger, Figure 5; col. 15, lines 48-51; and col. 16, lines 1-4). In each of these examples, it can be seen that "engagement" is accomplished via threading of the telescopic drive shafts within the anchor plate nuts 152/155 and 230, the gear housing 210, the housings 310, 410 and 510 and the drive anchor 530.

Thus, Landsberger does not teach or suggest the specific flange/flange engagement structures as recited in Applicant's independent claim 1 as amended. Landsberger therefore fails to disclose each and every limitation set forth in independent claim 1.

Claims 2-21 and 24 are dependent upon claim 1 and include all of the limitations thereof. For at least these reasons, the Examiner has failed to establish anticipation of Applicant's claims 1-21 and 24 under 35 U.S.C. 102(b). Withdrawal of this rejection is therefore respectfully requested.

***Claims 25-28***

Independent claim 25 as amended recites implanting a first transmitting means having a first flange engaging structure onto the first tissue region, implanting a second transmitting means having a second flange engaging structure onto the second tissue region, engaging a first flange of an expansion means with the first flange engaging structure of the first transmitting means, engaging a second flange of the expansion means with the second flange engaging structure of the second transmitting means, activating the expansion means to exert a force distracting the first transmitting means from the second transmitting means to create a distraction space for formation of distracted tissue, and disengaging the expansion means from the first transmitting means and the second transmitting means after the distraction is complete.

Support for the amendments to claim 25 may be found, for example, in Applicant's originally filed specification at page 22, line 27 to page 23, line 1; page 38, lines 22-25; and page 39, lines 3-5. Support may also be found, for example, in FIGS. 1, 2, 3, 4, 5 and 6A-6C of Applicant's specification.

Landsberger does not teach or suggest recites implanting a first transmitting means having a first flange engaging structure onto the first tissue region or implanting a second transmitting means having a second flange engaging structure onto the second tissue region, as recited in independent claim 25 as amended. Nor does Landsberger teach or suggest engaging a first flange of an expansion means with the first flange engaging structure of the first transmitting means, engaging a second flange of the expansion means with the second flange engaging structure of the second transmitting means, as is also recited in independent claim 25 as amended.

Rather, as discussed above with respect to claim 1, Landsberger teaches that "engagement" is accomplished via threading of the telescopic drive shafts within the various forms of the base anchor plates. As a result, Landsberger fails to teach or suggest the specific method of engaging a first flange of an expansion means with the first flange engaging structure of the first transmitting means, engaging a second flange of the expansion means with the second flange engaging structure of the second transmitting means, as recited in amended independent claim 25.

Claims 26-28 are dependent upon claim 25 and include all of the limitations thereof. For at least these reasons, the Examiner has failed to establish anticipation of Applicant's claims 25-28 under 35 U.S.C. 102(b). Withdrawal of this rejection is therefore respectfully requested.

***Claims 42-47***

Independent claim 42 as amended recites a first transmitting structure that transmits force to a first tissue region, a second transmitting structure that transmits force to a second tissue region, and an expansion structure that distracts the first transmitting structure from the second transmitting structure to create a distraction space for formation of distracted connective tissue, the expansion structure further comprising a proximal end having a first flange that engages a first slot of the first transmitting structure, and a distal end having a second flange that engages a second slot of the second transmitting structure, wherein at least one of the first transmitting structure, the second transmitting structure and the expansion structure comprises a biodegradable, bioerodible or bioresorbable material.

Support for the amendments to claim 42 may be found, for example, in Applicant's originally filed specification at page 22, line 27 to page 23, line 1; page 38, lines 22-25; and page 39, lines 3-5. Support may also be found, for example, in FIGS. 1, 2, 3, 4, 5 and 6A-6C of Applicant's specification.

Landsberger does not teach or suggest an expansion structure comprising a proximal end having a first flange that engages a first slot of the first transmitting structure, and a distal end having a second flange that engages a second slot of the second transmitting structure.

Rather, as discussed above with respect to independent claims 1 and 25, Landsberger teaches that that "engagement" is accomplished via threading of the telescopic drive shafts within the various forms of the base anchor plates. As a result, Landsberger fails to teach or suggest an expansion structure comprising a proximal end having a first flange that engages a first slot of the first transmitting structure, and a distal end having a second flange that engages a second slot of the second transmitting structure as recited in independent claim 42.

Claims 43-47 are dependent upon claim 42 and include all of the limitations thereof. For at least these reasons, the Examiner has failed to establish anticipation of Applicant's claims 42-47 under 35 U.S.C. 102(b). Withdrawal of this rejection is therefore respectfully requested.

***New claim 48***

New claim 48 has been added. New claim 48 recites the first flange engagement structure having a first slot that engages the first flange of the expansion means and the second flange engagement means having a second slot that engages the second flange of the expansion means.

Support for new claim 48 may be found in Applicant's originally filed specification at page 22, line 27 to page 23, line 1. (Amendments to this paragraph were made in Applicant's amendment filed May 4, 2006, and again at page 2 of this paper.) Support may also be found in FIGS. 1, 2, 3, 4, 5 and 6A-6C of Applicant's specification. Thus, no new matter has been added.

As discussed above with respect to claims 1, 25 and 42, Landsberger teaches that that "engagement" is accomplished via threading of the telescopic drive shafts within the various forms of the base anchor plates.

As a result, Landsberger does not teach or suggest first and/or second flange engagement structures, much less a first flange engagement structure having a first slot that engages the first flange of the expansion means and a second flange engagement means having a second slot that engages the second flange of the expansion means as recited in new claim 48.

Allowance of claim 48 is therefore respectfully requested.

**CONCLUSION**

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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